

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
CONCILIO MISION CRISTIANA)	File No. EB-01-IH-0304
FUENTE DE AGUA VIVA, INC.)	NAL/Acct. No. 200232080017
Licensee of Station WQHA(TV))	FRN 0005-4120-02
Aquada, Puerto Rico)	Facility ID# 3255

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 1, 2002

Released: July 3, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Concilio Mision Cristiana Fuente de Agua Viva, Inc. ("Concilio Mision") has apparently violated Section 73.1207(b)¹ of the Commission's rules, which prohibits a broadcast station from rebroadcasting the program or any part thereof of another broadcast station, without obtaining the express, written authority of the originating station. Based upon our investigation of the facts and circumstances surrounding this matter, we find that Concilio Mision is apparently liable for a forfeiture in the amount of one thousand dollars (\$1,000.00).

II. BACKGROUND

2. Station WQHA(TV), Aguada, Puerto Rico, which broadcasts Spanish-language Christian programming, is licensed to Concilio Mision. Among its locally originated programming, the station broadcasts a television program called "El Tribunal Cristiano." WSKN(AM), San Juan, Puerto Rico, which broadcasts the radio program "Saliendo del Closet," is licensed to Madifide, Inc.

3. On April 9, 2001, the Commission received a complaint from the producer of "Saliendo del Closet" that Concilio Mision rebroadcast a portion of "Saliendo del Closet," which was broadcast originally on WSKN(AM) on November 1, 2000. In a May 11, 2001 letter of inquiry directed to Concilio Mision, the Bureau inquired whether WQHA(TV) rebroadcast any portion of the programming of WSKN(AM).² The Bureau directed that, if applicable, Concilio

¹ 47 C.F.R. § 73.1207(b).

² May 11, 2001, Letter of Inquiry from Charles Kelley, Chief, Investigations & Hearings Division, Enforcement Bureau, to Concilio Mision, Television Station WQHA(TV) ("LOI").

Mision furnish the Bureau with a copy of the written consent to rebroadcast the WSKN(AM) programming.

4. In its response to the letter of inquiry, Concilio Mision admits that a portion of the “Saliendo del Closet” radio program was aired on the “El Tribunal Cristiano” television program on two separate occasions, November 2 and November 6, 2000; however, Concilio Mision claims it received oral authorization from WSKN(AM).³ Concilio Mision claims that the producer of “El Tribunal Cristiano” contacted an “acting station officer” for WSKN(AM) by telephone on November 1, 2000, and requested a recording of the “Saliendo del Closet” program for rebroadcast on “El Tribunal Cristiano.”⁴ Concilio Mision further claims that the acting station officer for WSKN(AM) orally informed the producer of “El Tribunal Cristiano” that WSKN(AM) did not make or distribute such recordings, but the producer of “El Tribunal Cristiano” could make an off-the-air copy for use on WQHA(TV)’s program.⁵ The alleged acting station officer for WSKN(AM) denies that he granted the producer of “El Tribunal Cristiano” oral authorization to rebroadcast a portion of the “Saliendo del Closet” radio program; denies that he is an officer of WSKN(AM); denies that he had the authority to grant permission to rebroadcast a portion of “Saliendo del Closet;” and denies that a conversation with the “El Tribunal Cristiano” producer occurred on November 1, 2000.⁶

5. Concilio Mision states that it has taken corrective action to prevent this problem from recurring. Concilio Mision has instituted new procedures, which now require written authorization from the originating station before WQHA(TV) rebroadcasts programming initiated on another broadcast station. The written authorization must come from a management level employee of the originating station and be acknowledged by the signature of a management level employee at WQHA(TV).⁷

III. DISCUSSION

6. Section 73.1207(b) of the rules states as follows:

No broadcast station may retransmit the program, or any part thereof, of another U.S. broadcast station without the express authority of the originating station. A copy of the written consent of the licensee originating the program must be kept by the licensee of the station retransmitting such program and made available to the FCC upon request.

³ See June 25, 2001, Response to LOI from Colette M. Capretz, Shaw Pittman, to Charles Kelley, Chief, Investigations & Hearings Division, Enforcement Bureau (“LOI Response”).

⁴ LOI Response at 2.

⁵ *Id.*

⁶ See Affidavit of Eusebio (“Machi”) Medina Picon, Independent Producer of WSKN(AM) at 2.

⁷ LOI Response at 3.

See also Section 325(a) of the Communications Act of 1934, as amended (“Act”).⁸

7. Concilio Mision admits it rebroadcast a portion of the “Saliendo del Closet” radio program on two separate occasions, but claims it was granted oral consent by WSKN(AM).⁹ Section 73.1207(b) requires that “written consent” be provided to the Commission upon request. Thus, consent must be written and oral consent is insufficient.¹⁰ In its May 11, 2001 letter of inquiry, the Bureau directed Concilio Mision to provide a copy of any written consent, but Concilio Mision failed to provide it. Thus, Concilio Mision apparently violated Section 73.1207(b) of the Rules.

8. In light of Concilio Mision’s apparent failure to comply with Section 73.1207(b) of the rules, we find that a proposed forfeiture is warranted. Section 503(b) of the Act states that any person that willfully or repeatedly¹¹ fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable for a forfeiture penalty.¹² In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹³ The Commission’s *Forfeiture Policy Statement*¹⁴ does not explicitly identify a base forfeiture amount for violations of section 73.1207(b) of the rules. However, considering all the facts and circumstances and Commission precedent, we find that a forfeiture of \$1,000.00 is apparently warranted.¹⁵

⁸ 47 U.S.C. § 325(a).

⁹ LOI Response at 2.

¹⁰ Consent from the producer of “Saliendo del Closet,” however, is immaterial. Section 73.1207(b) of the rules requires the consent of the originating licensee.

¹¹ A party “willfully” violates the Commission’s rules when it knows it is taking the action in question, irrespective of any intent to violate the Commission’s rules, and “repeatedly” means more than once. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88 (1991).

¹² 47 U.S.C. § 503(b); see also 47 C.F.R. § 1.80(a).

¹³ 47 U.S.C. § 503(b)(2)(D).

¹⁴ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission’s Rules*, 12 FCC Rcd 17087, 17100 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

¹⁵ E.g., *Duchossois Communications Co. of Maryland, Inc.*, 11 FCC Rcd 5785 (1996) (\$1,000 NAL for violation of section 73.1207); *Matter of Liability of Eli and Harry Daniels, d.b.a., The Heart of the Black Hills Stations*, 29 FCC 2d 332 (\$1,000 forfeiture for violation of section 73.655, precursor to section 73.1207), application for remission or mitigation denied, 30 FCC 2d 781 (1971).

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Act,¹⁶ and sections 0.111, 0.311 and 1.80 of the rules,¹⁷ Concilio Mision Cristiana Fuente de Agua Viva, Inc. is HEREBY NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand dollars (\$1,000.00) for willfully and repeatedly violating section 73.1207(b), which prohibits a broadcast station from rebroadcasting the program or any part thereof of another broadcast station, without obtaining the express, written authority of the originating station.

10. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules, within thirty (30) days of the release date of this NOTICE OF APPARENT LIABILITY, Concilio Mision Cristiana Fuente de Agua Viva, Inc. SHALL PAY to the United States the full amount of the proposed forfeiture OR SHALL FILE a written statement showing why the proposed forfeiture should not be imposed or should be reduced.

11. Payment of the forfeiture amount may be made by mailing a check or similar instrument payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number ("FRN") and the "NAL/Acct. No." referenced above.

12. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street S.W., Room 3-B443, Washington, D.C., 20554, and must include the "NAL/Acct. No." referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation provided.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenues and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

¹⁶ 47 U.S.C. § 503(b).

¹⁷ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

¹⁸ See 47 C.F.R. § 1.1914.

15. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability shall be sent by Certified Mail/Return Receipt Requested to John A. Borsari, Borsari & Associates, 2111 Wilson Blvd., Suite 700, Arlington, VA 22210, counsel for Concilio Mision Cristiana Fuente de Agua Viva, Inc.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau